

COUNTY OF YORK MEMORANDUM

DATE: June 29, 2004 (BOS Mtg. 8/3/04)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Revised license agreement to allow construction of roadway improvements on Bay Tree Beach Road extended to serve property of Rhonda M. Chase and Robert M. Buckanin

By Resolution R03-35, adopted March 4, 2003, the Board authorized the execution of a license agreement with Rhonda M. Chase and Robert M. Buckanin to place water and utility lines within an unimproved County-owned roadway (Bay Tree Beach Road extended) for the purpose of providing utility services to property owned by Chase and Buckanin at 1101 and 1103 Bay Tree Beach Road (see attached map of the vicinity prepared by the Geographic Information System office). Since that time, Chase and Buckanin have proposed also constructing a 12 foot wide gravel driveway within the roadway from the end of the paved portion of Bay Tree Beach Road to their property. Staff in the Department of Environmental and Development Services support the request to construct the driveway largely because its construction may help mitigate the damage caused by vehicular traffic to wetlands areas through which Bay Tree Beach Road extended passes. For your information, Ms. Chase and Mr. Buckanin have retained AES Consulting Engineers to design the driveway and are currently pursuing the necessary wetlands permits and Chesapeake Bay Preservation Act variance. Attached for your consideration is a proposed revision to the existing license agreement, modified to allow the construction of a driveway of gravel or crushed stone. The draft agreement states that the public's right of passage over Bay Tree Beach Road extended will not be impaired by the granting of this license agreement. Ms. Chase and Mr. Buckanin have acknowledged their understanding that the public will have the right to travel over the driveway which they propose to construct, and that nothing in this license agreement will require anyone to reimburse them for any wear and tear to the driveway caused by such passage.

For most of its length, Bay Tree Beach Road exists as a paved, state-maintained road (see attached excerpt from a street map of the area). However, for approximately one-half mile beyond the paved portion, Bay Tree Beach Road is unimproved. By a deed dated April 16, 1958, C. S. Withrow and Margaret Withrow, husband and wife, conveyed Bay Tree Beach Road extended to the County to a point which appears to extend to the two parcels owned by Chase and Buckanin. Although later surveys of record show Bay Tree Beach Road extended as having a width of 50', the 1958 deed to the County conveyed only a 40' strip. Nonetheless, that width is sufficient to accommodate the 12' wide driveway proposed to be constructed by Ms. Chase and Mr. Buckanin.

Over the years, Bay Tree Beach Road extended appears to have been utilized by persons owning property in the area either to gain access to their own property or to a beach area lying to the south of the Buckanin/Chase parcels. Consequently, the County Attorney has advised that Bay Tree Beach Road extended may have acquired the status of a public road even though it has never been improved or taken into the state system of highways. For that reason, the proposed license agreement is careful to acknowledge that Buckanin and Chase would not be able to prohibit the public from using the driveway, that members of the public would continue to have the right to drive across any driveway they construct, and that the County will not involve itself in any agreements Buckanin and Chase may attempt to negotiate with their neighbors to share in the maintenance cost of the driveway. Moreover, in the event that Bay Tree Beach Road extended were ever to be improved and taken into the state system, Ms. Chase and Mr. Buckanin would be required to remove any of their improvements to the extent necessary to construct a public roadway. Further, Buckanin and Chase would be obligated to guarantee and hold harmless the County against any liability for injuries or damages caused as a result of the improvements they propose to construct. The agreement has been drafted such that it can be recorded among the land records so that any subsequent owners of the property would be similarly obligated.

The Board may wish to be aware that a property title dispute over a portion of the roadway previously filed in the York County Circuit Court appears to have been resolved as of this writing. A settlement agreement acknowledging the County's ownership of the unimproved portion of the road is being circulated for signatures by all counsel.

I believe that the execution of the license agreement serves the County's interest by having a portion of Bay Tree Beach Road extended improved at no cost to the County. Given that the road appears to be a public roadway which Ms. Chase and Mr. Buckanin (and other members of the public) have the right to traverse, and given further that the unimproved roadway passes through wetlands and other environmentally sensitive areas which could be damaged by vehicular traffic if roadway improvements were not installed, I believe that the license agreement makes sense from an environmental perspective.

I recommend the approval of proposed Resolution R04-118, which will authorize the execution of the license agreement.

Barnett/3440:swb

Attachments

- Proposed license agreement
- Exhibit showing location of 1031 Bay Tree Beach Road
- Resolution R04-118